

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Aug 16, 2023

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

PATRICK J. R.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

NO: 4:22-CV-5092-RMP

ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND GRANTING
JUDGMENT IN FAVOR OF THE
COMMISSIONER

BEFORE THE COURT, without oral argument, are cross-motions for summary judgment from Plaintiff Patrick J. R.¹, ECF No. 10, and Defendant the Commissioner of Social Security (the "Commissioner"), ECF No. 11. Plaintiff seeks judicial review, pursuant to 42 U.S.C. §§ 405(g) of the Commissioner's partial denial of his claim for Social Security Income ("SSI") under Title XVI of the Social Security Act (the "Act"). *See* ECF No. 10 at 1–2.

¹ In the interest of protecting Plaintiff's privacy, the Court uses Plaintiff's first name and middle and last initials.

1 Having considered the parties' briefs, the administrative record, and the
2 applicable law, the Court is fully informed. For the reasons set forth below, the
3 Court denies Plaintiff's Motion for Summary Judgment and directs entry of
4 judgment in favor of the Commissioner.

5 **BACKGROUND**

6 ***General Context***

7 Plaintiff applied for SSI benefits on October 29, 2019, alleging onset on
8 January 15, 2019. Administrative Record ("AR")² 216. Plaintiff was 35 years old
9 on the alleged onset date and asserted that he is unable to work due to degenerative
10 disc disease, depression, anxiety, and post-traumatic stress disorder ("PTSD"). *See*
11 AR 216, 241. Plaintiff's application was denied initially and upon reconsideration,
12 and Plaintiff requested a hearing. *See* AR 155–60.

13 On May 12, 2021, Plaintiff appeared by telephone, represented by non-
14 attorney representative Justin Jerez³, at a hearing held by Administrative Law Judge
15 ("ALJ") Lori Freund from Spokane, Washington. AR 56–58. The ALJ heard from
16 Plaintiff as well as medical expert psychologist Ricardo Buitrago, Psy.D. and

17
18 ² The Administrative Record is filed at ECF No. 7.

19 ³ Plaintiff provided the Social Security Administration ("SSA") with an
20 Appointment of Representative form naming D. James Tree of Tree Law PLLC as
21 his principal representative and Mr. Jerez, of the same firm, as an additional
representative. AR 52–53.

1 vocational expert (“VE”) D.T. North. AR 60–92. ALJ Freund issued an
2 unfavorable decision on June 29, 2021, and the Appeals Council denied review. AR
3 1–6, 15–33.

4 ***ALJ’s Decision***

5 Applying the five-step evaluation process, ALJ Freund found:

6 **Step one:** Plaintiff has not engaged in substantial gainful activity since
7 October 29, 2019, the application date. AR 17.

8 **Step two:** Plaintiff has the following severe impairments: major depressive
9 disorder; generalized anxiety disorder; attention deficit-hyperactivity disorder
10 (“ADHD”); post-traumatic stress disorder (“PTSD”); degenerative disc disease of
11 the lumbar spine; and cannabis use disorder. AR 17 (citing 20 C.F.R. § 416.920(c)).

12 **Step three:** The ALJ concluded that Plaintiff does not have an impairment, or
13 combination of impairments, that meets or medically equals the severity of one of
14 the listed impairments in 20 C.F.R. Part 404, Subpart P, Appendix 1 (20 C.F.R. §§
15 416.920(d), 416.925, and 416.926). AR 18. With respect to Plaintiff’s physical
16 impairments, the ALJ memorialized that he considered listings 1.15 for disorders of
17 the skeletal spine resulting in compromise of a nerve root, 1.16 for lumbar spinal
18 stenosis resulting in a compromise of the cauda equina. AR 18–19. In assessing the
19 severity of Plaintiff’s mental impairments, the ALJ considered listings 12.04, 12.06,
20 12.11, and 12.15 and whether Plaintiff satisfied the “paragraph B” criteria. AR 19.

1 The ALJ found that Plaintiff is moderately limited in understanding, remembering,
2 or applying information; in interacting with others; in concentrating, persisting, or
3 maintaining pace; and in adapting or managing oneself. Therefore, the ALJ found
4 that Plaintiff did not exhibit a marked limitation in a broad area of functioning. AR
5 20. The ALJ also memorialized his finding that the evidence in Plaintiff's record
6 fails to satisfy the "paragraph C" criteria. AR 20. The ALJ referred to Dr.
7 Buitrago's testimony and reasoned as follows:

8 It was Dr. Buitrago's conclusion in his testimony that claimant's mental
9 impairments, considered individually and in combination, as well as
10 consideration of the effects of substance use, do not meet or medically
11 listing level severity. Dr. Buitrago advised that his assessed limitations
12 in the above paragraph B criteria take into consideration the effects of
13 claimant's cannabis use disorder.

14 ...

15 Dr. Buitrago testified that the claimant's record does not establish the
16 paragraph C criteria.

17 AR 20.

18 **Residual Functional Capacity ("RFC"):** The ALJ found that Plaintiff can
19 perform "light work as defined in [20 C.F.R. § 416.967(b)] with the following
20 limitations. He is able to lift and/or carry up to 20 pounds occasionally and 10
21 pounds frequently, stand and/or walk for at least 6 hours in an 8-hour day, and sit for
at least 6 hours in an 8-hour day, with normal breaks. He is able to occasionally
climb ladders/ropes/scaffolds, stoop and crouch, and frequently climb ramps/stairs,
kneel and crawl. He should avoid even moderate exposure to unprotected heights

1 and hazardous machinery. He is limited to simple and repetitive tasks, only
2 occasional interaction with the general public and coworkers, and only occasional
3 changes in work setting.” AR 21.

4 In determining Plaintiff’s RFC, the ALJ found that Plaintiff’s “medically
5 determinable impairments could reasonably be expected to cause some of the alleged
6 physical symptoms. However, [Plaintiff’s] statements concerning the intensity,
7 persistence and limiting effects of these symptoms are not entirely consistent with
8 the medical evidence and other evidence in the record for the reasons explained in
9 this decision.” AR 22.

10 **Step four:** The ALJ found that Plaintiff is unable to perform any past relevant
11 work. AR 31 (citing 20 C.F.R. § 416.965).

12 **Step five:** The ALJ found that Plaintiff was 36 years old, which is defined as a
13 younger individual age 18–49, on the date the application was filed and that Plaintiff
14 has a limited education. AR 31. The ALJ further found that transferability of job
15 skills is not material to the determination of disability because “using the Medical-
16 Vocational Rules as a framework supports a finding that [Plaintiff] is ‘not disabled,’
17 whether or not [Plaintiff] has transferable job skills.” AR 31 (citing SSR 82-41 and
18 20 C.F.R. Part 404, Subpart P, Appendix 2). The ALJ determined that, considering
19 Plaintiff’s age, education, work experience, and RFC, there are jobs that exist in
20 significant numbers in the national economy that Plaintiff can perform, including the
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1 following representative occupations identified by the VE: marker (light, unskilled
2 work with approximately 129,000 jobs nationally); poultry dresser (light, unskilled
3 work, with approximately 20,000 jobs nationally; and routing clerk (light, unskilled
4 work, with approximately 105,000 jobs nationally). AR 32. In conclusion, the ALJ
5 found that Plaintiff has not been under a disability, as defined by the SSA, since he
6 filed his application on October 29, 2019. AR 32.

7 Through counsel Mr. Tree, Plaintiff sought review of the ALJ's unfavorable
8 decision in this Court. ECF No. 1.

9 LEGAL STANDARD

10 *Standard of Review*

11 Congress has provided a limited scope of judicial review of the
12 Commissioner's decision. 42 U.S.C. § 405(g). A court may set aside the
13 Commissioner's denial of benefits only if the ALJ's determination was based on
14 legal error or not supported by substantial evidence. *See Jones v. Heckler*, 760 F.2d
15 993, 995 (9th Cir. 1985) (citing 42 U.S.C. § 405(g)). "The [Commissioner's]
16 determination that a claimant is not disabled will be upheld if the findings of fact are
17 supported by substantial evidence." *Delgado v. Heckler*, 722 F.2d 570, 572 (9th Cir.
18 1983) (citing 42 U.S.C. § 405(g)). Substantial evidence is more than a mere
19 scintilla, but less than a preponderance. *Sorenson v. Weinberger*, 514 F.2d 1112,
20 1119 n.10 (9th Cir. 1975); *McCallister v. Sullivan*, 888 F.2d 599, 601–02 (9th Cir.

1 1989). Substantial evidence “means such evidence as a reasonable mind might
2 accept as adequate to support a conclusion.” *Richardson v. Perales*, 402 U.S. 389,
3 401 (1971) (citations omitted). “[S]uch inferences and conclusions as the
4 [Commissioner] may reasonably draw from the evidence” also will be upheld. *Mark*
5 *v. Celebrezze*, 348 F.2d 289, 293 (9th Cir. 1965). On review, the court considers the
6 record, not just the evidence supporting the decisions of the Commissioner.
7 *Weetman v. Sullivan*, 877 F.2d 20, 22 (9th Cir. 1989).

8 A decision supported by substantial evidence still will be set aside if the
9 proper legal standards were not applied in weighing the evidence and making a
10 decision. *Browner v. Sec’y of Health and Human Servs.*, 839 F.2d 432, 433 (9th Cir.
11 1988). Thus, if there is substantial evidence to support the administrative findings,
12 or if there is conflicting evidence that will support a finding of either disability or
13 nondisability, the finding of the Commissioner is conclusive. *Sprague v. Bowen*,
14 812 F.2d 1226, 1229–30 (9th Cir. 1987).

15 ***Definition of Disability***

16 The Social Security Act defines “disability” as the “inability to engage in any
17 substantial gainful activity by reason of any medically determinable physical or
18 mental impairment which can be expected to result in death, or which has lasted or
19 can be expected to last for a continuous period of not less than 12 months.” 42
20 U.S.C. § 423(d)(1)(A). The Act also provides that a claimant shall be determined to
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1 be under a disability only if the impairments are of such severity that the claimant is
2 not only unable to do their previous work, but cannot, considering the claimant's
3 age, education, and work experiences, engage in any other substantial gainful work
4 which exists in the national economy. 42 U.S.C. § 423(d)(2)(A). Thus, the
5 definition of disability consists of both medical and vocational components. *Edlund*
6 *v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001).

7 ***Sequential Evaluation Process***

8 The Commissioner has established a five-step sequential evaluation process
9 for determining whether a claimant is disabled. 20 C.F.R. § 416.920. Step one
10 determines if they are engaged in substantial gainful activities. If the claimant is
11 engaged in substantial gainful activities, benefits are denied. 20 C.F.R. §
12 416.920(a)(4)(i).

13 If the claimant is not engaged in substantial gainful activities, the decision
14 maker proceeds to step two and determines whether the claimant has a medically
15 severe impairment or combination of impairments. 20 C.F.R. § 416.920(a)(4)(ii). If
16 the claimant does not have a severe impairment or combination of impairments, the
17 disability claim is denied.

18 If the impairment is severe, the evaluation proceeds to the third step, which
19 compares the claimant's impairment with listed impairments acknowledged by the
20 Commissioner to be so severe as to preclude any gainful activity. 20 C.F.R. §
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1 416.920(a)(4)(iii); *see also* 20 C.F.R. § 404, Subpt. P, App. 1. If the impairment
2 meets or equals one of the listed impairments, the claimant is conclusively presumed
3 to be disabled.

4 If the impairment is not one conclusively presumed to be disabling, the
5 evaluation proceeds to the fourth step, which determines whether the impairment
6 prevents the claimant from performing work that they have performed in the past. If
7 the claimant can perform their previous work, the claimant is not disabled. 20
8 C.F.R. § 416.920(a)(4)(iv). At this step, the claimant's RFC assessment is
9 considered.

10 If the claimant cannot perform this work, the fifth and final step in the process
11 determines whether the claimant is able to perform other work in the national
12 economy considering their residual functional capacity and age, education, and past
13 work experience. 20 C.F.R. § 416.920(a)(4)(v); *Bowen v. Yuckert*, 482 U.S. 137,
14 142 (1987).

15 The initial burden of proof rests upon the claimant to establish a prima facie
16 case of entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th
17 Cir. 1971); *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999). The initial burden
18 is met once the claimant establishes that a physical or mental impairment prevents
19 them from engaging in their previous occupation. *Meanel*, 172 F.3d at 1113. The
20 burden then shifts, at step five, to the Commissioner to show that (1) the claimant
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1 can perform other substantial gainful activity, and (2) a “significant number of jobs
2 exist in the national economy” that the claimant can perform. *Kail v. Heckler*, 722
3 F.2d 1496, 1498 (9th Cir. 1984).

4 **ISSUES ON APPEAL**

5 The parties’ motions raise the following issues regarding the ALJ’s decision:

- 6 1. Did the ALJ erroneously discount Plaintiff’s subjective complaints?
- 7 2. Did the ALJ erroneously assess the medical source opinions?

8 ***Subjective Symptom Testimony***

9 Plaintiff argues that the ALJ erred in rejecting his testimony based on
10 conservative treatment, inconsistency with objective medical findings, evidence of
11 improvement, and other inconsistencies. ECF No. 10 at 7–12. Specifically, Plaintiff
12 argues that the ALJ erred in considering pain and psychiatric medications, physical
13 therapy, and joint and facet nerve block injections as “conservative treatment.” *Id.*
14 at 7 (citing *Garrison v. Colvin*, 759 F.3d 995, 1015 n. 20 (9th Cir. 2014) (expressing
15 “doubt that epidural steroid shots to the neck and lower back qualify as
16 ‘conservative’ medical treatment). Plaintiff adds that the record does not indicate
17 that more aggressive treatment options were available to Plaintiff. *Id.* at 8 (citing
18 AR 367, 371, 389, 514, 554, 762, and 772; citing *Lapeirre-Gutt v. Astrue*, 382 Fed.
19 Appx. 662, 664 (9th Cir. 2010) (finding that “[a] claimant cannot be discredited for
20 failing to pursue non-conservative treatment options where none exists”).
21

1 With respect to objective findings, Plaintiff argues that the ALJ could not rely
2 on a lack of support from the objective findings alone to discount Plaintiff's
3 allegation regarding back pain. ECF No. 10 at 8–9 (citing SSR 16-3; *Light v. Soc.*
4 *Sec. Admin.*, 119 F.3d 789, 792 (9th Cir. 1997)). With respect to Plaintiff's mental
5 symptoms, Plaintiff argues that the ALJ did not rely on substantial evidence in
6 finding that his psychological examinations have usually been within normal limits.
7 *Id.* at 9 (citing AR 23). Plaintiff cites to records indicating that he presented with
8 psychological symptoms. *Id.* at 9–10 (citing AR 23, 328, 340, 346, 351–52, 361,
9 496–547). Plaintiff maintains that “[t]aken as a whole, [Plaintiff's] medical records
10 document continued depression and anxiety consistent with his testimony.” *Id.* at
11 10.

12 Plaintiff also asserts that the ALJ did not cite to evidence of sustained
13 improvement, as the record indicates that the symptom improvement Plaintiff
14 reported in February 2020 had dissipated by May and June 2020 and did not amount
15 to a broader trend. ECF No. 10 at 11 (citing AR 24, 610–11, 620, 682, and 687).
16 Lastly, Plaintiff argues that while the ALJ discounted Plaintiff's testimony based on
17 many of the clinician's opinions being based on Plaintiff's self-reports, “a clinical
18 interview and mental status evaluation are objective measures and cannot be
19 discounted as a ‘self-report.’” *Id.* at 12 (quoting *Buck v. Berryhill*, 869 F.3d 1040,
20 1049 (9th Cir. 2017)). Furthermore, Plaintiff disputes that there were
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1 inconsistencies in his reports, as he calls attention to the discussion at the hearing
2 that he does not believe his use of marijuana to amount to “substance abuse.” *Id.*
3 (citing AR 25, 77).

4 The Commissioner responds that the ALJ cited to evidence of conservative
5 treatment in the form of Plaintiff’s responding well to physical therapy in 2019 and
6 then ceasing treatment after only three sessions. ECF No. 11 at 4 (citing AR 15,
7 216). The Commissioner cites to further evidence that Plaintiff responded well to
8 physical therapy in April 2020 and otherwise has addressed his physical symptoms
9 with medications such as an anti-convulsant, NSAIDs, and a muscle relaxer. *Id.*
10 (citing AR 23, 367, 372, 516, 705; *Christine M. v. Kijakazi*, No. 3:20-CV-1708-SI,
11 2021 WL 4709722, at *6 (D. Or. Oct. 8, 2021); *Thomas v. Berryhill*, No. 3:16-
12 CV-00800-HZ, 2017 WL 1073367, at *5 (D. Or. Mar. 21, 2017) (district court
13 decisions finding medications and/or physical therapy to amount to conservative
14 treatment). The Commissioner asserts that the fact that Plaintiff reported receiving
15 eighty percent relief from three injections, in June, July, and August 2020, “does not
16 undermine the ALJ’s conclusion . . . [that Plaintiff] ‘overall [received] only limited,
17 conservative treatment.’” *Id.* at 5 (citing AR 22, 575–76, 714–15, and 726–27).

18 With respect to Plaintiff’s daily activities, the Commissioner argues that
19 substantial evidence supported the ALJ’s reasoning that Plaintiff’s activities are
20 inconsistent with the degree of impairment that Plaintiff alleges. ECF No. 11 at 6
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1 The Commissioner submits that, contrary to Plaintiff's reports of disabling pain and
2 difficulty with all physical activities, Plaintiff reported being able to camp for four
3 days in 2020. *Id.* at 6 (citing AR 21, 24, 619). The Commissioner adds that more
4 evidence not cited by the ALJ further supports that Plaintiff was able to be more
5 active than his reported physical limitations would seem to allow. *Id.* (citing AR
6 372, indicating that Plaintiff requested twenty days of medication for a backpacking
7 trip in September 2019); *Warre v. Comm'r Soc. Sec. Admin.*, 439 F.3d 1001, 1005
8 n.3 (9th Cir. 2006) (providing that district courts may consider "additional support"
9 where the Commissioner is "not asking the court to invent a new ground [for the]
10 decision"). The Commissioner adds, "Furthermore, contrary to Riggins's contention
11 that he had problems getting along with others, he went camping with friends,
12 received rides from others, shopped in stores, socialized, and went to church.
13 Additionally, in 2020, he reported that his pain from physical therapy affected his
14 ability to help care for his nieces and nephews." *Id.* (citing AR 20–21, 267–
15 68, 24, 372, 565).

16 Next, the Commissioner asserts that substantial evidence supports the ALJ's
17 reasoning that "[t]he claimant's imaging, neuromuscular examinations,
18 consultative psychological evaluation, mental status screenings and
19 treatment/progress notes do not support the degree of severity alleged." AR 22.
20 The Commissioner cites to records indicating the spinal and pelvic imaging revealed
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1 no significant issues and the unchallenged medical source opinions by Norman
2 Staley, MD, and Robert Hander, MD that Plaintiff's imaging is consistent with light
3 work. *Id.* at 8 (citing AR 105, 109, 127–30 105, 108-09, 125–27). The
4 Commissioner also directs the Court to Plaintiff's medical records evidencing
5 unremarkable physical examinations. *Id.* at 8–9 (citing AR 22, 324, 378, 385, 432,
6 443, 459, 496, 504, 557, and 724). With respect to Plaintiff's psychological
7 limitations, the Commissioner argues that the record supports the ALJ's reasoning
8 that Plaintiff's overall unremarkable presentation during mental status examinations
9 is inconsistent with Plaintiff's complaints of difficulty getting along with people and
10 problems with memory and concentration. *Id.* (citing AR 21, 23–24, 360–61, 321,
11 324, 328, 340, 351–52, 371, 447, 450, 454, 484, 557, 573, 683, 706, 720, 732, 744,
12 780).

13 Plaintiff replies that when he sought further relief for his back pain from an
14 orthopedist when injections were not helpful, the physician did not suggest surgery
15 and referred Plaintiff to his primary care provider for a rheumatologic workup. ECF
16 No. 12 at 2 (citing AR 772). Plaintiff adds, "Riggins repeatedly sought out
17 treatment; the fact that more aggressive treatment was not effective, not
18 recommended, or available to him is therefore not a valid reason for rejecting his
19 symptom testimony." *Id.* (citing *LaPeirre-Gutt*, 382 Fed. Appx. at 664). Plaintiff
20 further argues that doctors would not prescribe a more aggressive medication regimen
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1 to address his symptoms because of Plaintiff's history of illicit drug use; therefore,
2 Plaintiff's medications are not clear and convincing support for finding conservative
3 treatment. *Id.* at 3 (citing AR 762).

4 Plaintiff further replies that the Commissioner does not explain how going
5 camping for a few days is inconsistent with Plaintiff's description of his severely
6 depressed moods and back pain that limits his ability to sit, stand, or walk for
7 extended periods. ECF No. 12 at 3–4 (citing AR 21–22). Lastly, Plaintiff reiterates
8 his argument that the ALJ did not cite to evidence that demonstrates improvement to
9 the point of nondisability. *Id.* at 4–5 (citing 546–47)

10 In deciding whether to accept a claimant's subjective pain or symptom
11 testimony, an ALJ must perform a two-step analysis. *Smolen v. Chater*, 80 F.3d
12 1273, 1281 (9th Cir. 1996). First, the ALJ must evaluate "whether the claimant has
13 presented objective medical evidence of an underlying impairment 'which could
14 reasonably be expected to produce the pain or other symptoms alleged.'"
15 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007) (quoting *Bunnell v.*
16 *Sullivan*, 947 F.2d 341, 344 (9th Cir. 1991)). Second, if the first test is met and there
17 is no evidence of malingering, "the ALJ can reject the claimant's testimony about
18 the severity of [his] symptoms only by offering specific, clear and convincing
19 reasons for doing so." *Smolen*, 80 F.3d at 1281.

1 There is no allegation of malingering in this case. *See* AR 20. Plaintiff
2 alleged the following impairment, as summarized in the ALJ's decision:

3 The claimant has asserted disability from working due to a combination
4 of physical and mental conditions including lower back
5 arthritis/degenerative disc disease, depression, anxiety and PTSD. He
6 reported that he has received physical therapy but has been in a lot of
7 pain after treatment, and noted his anxiety is worse since the COVID-
8 19 pandemic. He further reported having some surgical procedures on
9 his back for arthritis in the lower back. He reported that he has a lot of
10 pain due to degenerative disc disease, and has difficulty being around
11 people due to PTSD, noting he does not leave his room. He further
12 reported problems with shortness of breath, depression and self-harm
13 behavior. He indicated that his conditions affect his abilities lifting,
14 standing, walking, sitting, kneeling, bending, squatting, reaching,
15 climbing stairs, as well as affect his memory and concentration, and
16 ability to get along with others. At the hearing, the claimant testified to
ongoing problems with chronic back pain, depression and anxiety, and
having anxiety "attacks" in past employment, noting at times he could
not perform job duties and has had to leave work early a couple of times
because of anxiety, "breaking out into a cold sweat," and feeling
overwhelmed. He noted that his back pain and problems including pain
down the right side of his body limits his ability to sit, stand or walk for
extended periods. He testified that no treatment, including pain
medications and injections, seems to work for his back pain. He
indicated that his chronic pain also affects his mental health and makes
his depression worse, noting he has periods of severe depressed mood
and engages in self-harm behaviors/cutting himself at times. He
testified that he participates in mental health counseling, recently by
telephone due to COVID.

17 AR 21 (internal citations to AR 240–47, 264–71, 281–88 omitted).

18 Here, the ALJ found Plaintiff's subjective complaints of disabling pain and
19 psychological limitations not fully consistent with the cumulative evidence. AR 23.
20 This Court finds the ALJ's evaluation supported by substantial evidence.

1 Although the lack of supporting medical evidence cannot form the sole basis
2 for discounting pain testimony, the ALJ may consider this factor when conducting
3 his analysis. *Burch v. Barnhart*, 400 F.3d 676, 680 (9th Cir. 2005). In other words,
4 an ALJ may properly discount subjective complaints where, as here, they are
5 contradicted by medical records, including the treatment record, imaging studies,
6 assessments of multiple consultative examiners, and the findings of the psychologist
7 who testified as a medical expert at the administrative hearing. *See Carmickle v.*
8 *Comm’r of Soc. Sec. Admin.*, 533 F.3d 1155, 1161 (9th Cir. 2008); *Thomas v.*
9 *Barnhart*, 278 F.3d 947, 958–59 (9th Cir. 2002).

10 The ALJ also noted that Plaintiff was treated “with pain and psychiatric
11 medications, as well as physical therapy and sacroiliac joint and facet nerve block
12 injections for low back pain, the objective medical record for the adjudicative period
13 shows overall only limited, conservative treatment.” AR 22. “Evidence of
14 ‘conservative treatment’ is sufficient to discount a claimant's testimony regarding the
15 severity of an impairment.” *Parra v. Astrue*, 481 F.3d 742, 751 (9th Cir. 2007).
16 While Plaintiff disputes that he could not take more aggressive pain medications
17 because of his history of substance abuse and argues that injections cannot be
18 considered conservative measures, Plaintiff’s own medical record characterizes his
19 treatment as conservative. AR 764 (“I recommend he continue to see pain specialist
20 and exhaust all minor procedural possibilities and conservative measures before
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1 considering any major surgical procedures.”). Moreover, Plaintiff does not cite the
2 Court any authority holding that injections cannot be considered to be a conservative
3 measure. *See Garrison*, 759 F.3d at 1015 n. 20 (in opinion cited by Plaintiff, Ninth
4 Circuit merely expressed “doubt,” in a footnote, that the claimant’s epidural steroid
5 shots to the neck and lower back amounted to ‘conservative’ medical treatment).

6 The ALJ further noted that the “[a]dditional inconsistencies by the claimant
7 further lessen the persuasiveness and supportability of his symptom reports” and that
8 the record indicated that Plaintiff had been noncompliant with prescribed medication
9 for his psychological symptoms. AR 25. Plaintiff does not challenge that in March
10 2019, within the relevant period, his clinician noted that Plaintiff acknowledged not
11 taking the medications that had been prescribed and had been advised not to
12 discontinue medication usage without consulting with his healthcare provider. AR
13 344, 347.

14 Where, as here, substantial evidence supports the ALJ’s assessment of the
15 claimant’s subjective complaints, and the ALJ’s reasons cumulatively amount to
16 specific, clear, and convincing bases to discount Plaintiff’s claims, this Court may
17 not overrule the Commissioner’s interpretation even if “the evidence is susceptible
18 to more than one rational interpretation.” *Magallanes v. Bowen*, 881 F.2d 747, 750
19 (9th Cir. 1989); *see also Morgan v. Commissioner*, 169 F.3d 595, 599 (9th Cir.
20 1999)(“[Q]uestions of credibility and resolutions of conflicts in the testimony are
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1 functions solely of the [Commissioner].”). Therefore, the Court finds no error on
2 this ground.

3 ***Medical Source Opinion***

4 Plaintiff argues that the ALJ erroneously evaluated the medical source opinion
5 from examining psychologist David T. Morgan, PhD. ECF No. 10 at 15–19.

6 Plaintiff argues that the ALJ did not provide sufficient reasoning for finding Dr.
7 Morgan’s opinion unpersuasive by stating that Dr. Morgan had not “reviewed any of
8 claimant’s medical record” and had based his opinion merely on a “one-time,
9 consultative evaluation.” ECF No. 10 at 15–16 (quoting AR 28). Plaintiff argues
10 that conducting a one-time consultative examination is not unusual or noteworthy
11 for medical sources. *Id.* (citing *Henderson v. Astrue*, 634 F.Supp.2d 1182, 1192
12 (E.D. Wash. 2009), for the proposition that “an ALJ’s implication that a medical
13 source’s opinion should be rejected in part because they are based on one-time
14 exams is erroneous). Plaintiff adds that “[i]t is not clear from the available
15 information whether or not Dr. Morgan considered any of [Plaintiff’s] medical
16 records, as he does not specify what records [the Washington State Department of
17 Social and Health Services (“DSHS”)] possessed and were available for review.” *Id.*
18 at 15.

19 Plaintiff further faults the ALJ for noting that Dr. Morgan’s evaluation was
20 “for purposes of determining claimant’s eligibility for state DSHS public assistance
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benefits.” ECF No. 10 at 16 (citing AR 28). Plaintiff cites Ninth Circuit caselaw providing that “the ‘purpose for which medical reports are obtained does not provide a legitimate basis for rejecting them. And examining doctor’s findings are entitled to no less weigh when the examination is procured by the claimant than when it is obtained by the Commissioner.” *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 832 (9th Cir. 1995)).

Plaintiff proceeds to argue that the ALJ’s reasoning that Dr. Morgan “‘appears to rely heavily on the claimant’s self-reports” also is legally insufficient as a basis to discount Dr. Morgan’s opinion. ECF No. 10 at 16 (citing AR 28). Plaintiff cites to caselaw supporting that an “ALJ errs by rejecting the opinion as ‘more heavily based on [the] patient’s self-report than on clinical observations” when the clinician also discusses his own observations, diagnoses, and prescriptions. *Id.* at 17 (citing *Ghanim v. Colvin*, 763 F.3d 1154, 1162 (9th Cir. 2014) (internal quotation omitted).

Plaintiff raises three other issues regarding the ALJ’s treatment of Dr. Morgan’s opinion. First, Plaintiff argues that the ALJ could not reject Dr. Morgan’s opinion merely because it was provided on a check-box form, as the Ninth Circuit has found that “‘there is no authority that a ‘check-the-box’ form is any less reliable than any other type of form; indeed, agency physicians routinely use these types of forms to assess the intensity, persistence, or limiting effects of impairments.” ECF No. 10 at 17 (quoting *Trevizo v. Berryhill*, 871 F.3d 664, 677 n. 4 (9th Cir. 2017)).

1 Second, Plaintiff argues that the ALJ made an impermissibly cursory
2 conclusion that some normal findings in Dr. Morgan’s mental status examination
3 and elsewhere in the record “do not seem consistent” with the marked degree of
4 limitation to which Dr. Morgan opined. *Id.* at 17–18 (quoting AR 29). Plaintiff
5 asserts that the ALJ must provide more explanation for his conclusion. *Id.* at 18
6 (citing *Garrison*, 759 F.3d at 1012). Plaintiff adds that the snapshot that a brief
7 evaluation offers of Plaintiff’s mental state “may not be directly transferrable to a
8 workplace environment.” *Id.* at 18 (citing *Kangail v. Barnhart*, 454 F.3d 627, 629
9 (7th Cir. 2006) (finding no contradiction where patient “was behaving pretty
10 normally during her office visits”).

11 Third, Plaintiff argues that the ALJ did not provide a legally sufficient reason
12 for finding Dr. Morgan’s opinion unpersuasive when he wrote that Dr. Morgan “did
13 not adequately account for the effect of claimant’s substance use on symptoms,”
14 particularly ongoing cannabis use. *Id.* at 18–19. Plaintiff argues that the ALJ is
15 required to first determine whether Plaintiff is disabled under the five-step inquiry
16 and then should consider whether Plaintiff would be disabled absent the effect of
17 cannabis use. *Id.* (citing *Bustamante v. Massanari*, 262 F.3d 949, 954–55 (9th Cir.
18 2001)).

19 The Commissioner counters that the ALJ reasonably found three opinions
20 more persuasive than Dr. Morgan’s. ECF No. 11 at 14. The Commissioner
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1 highlights that Dr. Buitrago reviewed all of the medical evidence and testified at the
2 hearing that Plaintiff could perform simple tasks requiring no more than occasional
3 contact with others. *Id.* (citing AR 63–75). The Commissioner continues that Dr.
4 Buitrago’s opinion “echoed the prior administrative findings of Michael Regets,
5 PhD and Jan L. Lewis, PhD.” *Id.* (citing AR 109–11, 127–28).

6 The Commissioner subsequently argues that substantial evidence supported
7 the ALJ’s reasoning that Dr. Morgan’s opinion is not well supported, as “Dr.
8 Morgan (1) did not review the records, (2) conducted a one-time forensic evaluation,
9 (3) offered only a checked-box form, with no meaningful explanation, and (4) relied
10 on [Plaintiff’s] subjective complaints and cited limited ‘clinical objective findings.’”
11 ECF No. 11 at 14–15 (citing AR 28–29). The Commissioner asserts that
12 “familiarity with the claimant and the record” and that Dr. Morgan’s checked-box
13 form provided no meaningful explanation and instead limited itself to the “sole
14 purpose” of assessing Plaintiff’s ability to engage in ““gainful employment based on
15 DSHS criteria for disability(ies) pertaining to eligibility for ABD/HEN or
16 TANF/WorkFirst programs ONLY.” *Id.* at 15 (citing AR 360) (boldface added by
17 the Commissioner removed). The Commissioner continues that the ALJ further
18 noted that Dr. Morgan’s report contained contradictions and lacked objective
19 support, which the Commissioner submits is exemplified by the fact that Dr. Morgan
20 diagnosed Plaintiff with only “PTSD and moderate depression, but assessed marked
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1 and severe limitations.” *Id.* at 16 (citing AR 27–28, 358–59) (citing *Hoopai v.*
2 *Astrue*, 499 F.3d 1071, 1077 (9th Cir. 2007) (holding that an ALJ is not required to
3 assume that mild to moderate depression is severe enough to require mental
4 limitations in the residual functional capacity assessment). The Commissioner
5 further cites to portions of the record that the Commissioner maintains show that
6 there were discrepancies that undermined Dr. Morgan’s opinion, including that other
7 clinicians noted that Plaintiff did not disclose to Dr. Morgan that he continued to use
8 marijuana and that Plaintiff reported to Dr. Morgan that he had difficulty being
9 around people and being irritable while the examination showed that Plaintiff was
10 cooperative. *Id.* (citing AR 25, 29, 321, 357–58, 435, 446, 544, 552, 555–56, 572,
11 620, 626, 639, 643, 645, 671, 675, 683, 711, 719, 731, 743, 750, 758, and 770).

12 In addition, the Commissioner argues that the ALJ is “‘the final arbiter with
13 respect to resolving ambiguities in the medical evidence,’” and that the ALJ relied
14 on “‘ample support” to find that, aside from depressed mood, tearful affect, and
15 memory difficulties, Dr. Morgan’s examination was normal. *Id.* at 16–17 (quoting
16 *Tommasetti v. Astrue*, 533 F.3d 1035, 1041–42 (9th Cir. 2008)); citing AR 66
17 (testimony by Dr. Buitrago that Dr. Morgan’s exam “‘was generally within normal
18 limits” and did not support marked to severe functional limitations).

19 The regulations that took effect on March 27, 2017, provide a new framework
20 for the ALJ’s consideration of medical opinion evidence, and require the ALJ to
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1 articulate how persuasive he finds all medical opinions in the record, without any
2 hierarchy of weight afforded to different medical sources. *See* Rules Regarding the
3 Evaluation of Medical Evidence, 82 Fed. Reg. 5844-01, 2017 WL 168819 (Jan. 18,
4 2017). Instead, for each source of a medical opinion, the ALJ must consider several
5 factors, including supportability, consistency, the source’s relationship with the
6 claimant, any specialization of the source, and other factors such as the source’s
7 familiarity with other evidence in the claim or an understanding of Social Security’s
8 disability program. 20 C.F.R. § 404.1520c(c)(1)-(5).

9 Supportability and consistency are the “most important” factors, and the ALJ
10 must articulate how she considered those factors in determining the persuasiveness
11 of each medical opinion or prior administrative medical finding. 20 C.F.R. §
12 404.1520c(b)(2). With respect to these two factors, the regulations provide that an
13 opinion is more persuasive in relation to how “relevant the objective medical
14 evidence and supporting explanations presented” and how “consistent” with
15 evidence from other sources the medical opinion is. 20 C.F.R. § 404.1520c(c)(1).
16 The ALJ may explain how she considered the other factors, but is not required to do
17 so, except in cases where two or more opinions are equally well-supported and
18 consistent with the record. 20 C.F.R. § 404.1520c(b)(2), (3). Courts also must
19 continue to consider whether the ALJ’s finding is supported by substantial evidence.
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1 *See* 42 U.S.C. § 405(g) (“The findings of the Commissioner of Social Security as to
2 any fact, if supported by substantial evidence, shall be conclusive . . .”).

3 Prior to revision of the regulations, the Ninth Circuit required an ALJ to
4 provide clear and convincing reasons to reject an uncontradicted treating or
5 examining physician’s opinion and provide specific and legitimate reasons where the
6 record contains a contradictory opinion. *See Revels v. Berryhill*, 874 F.3d 648, 654
7 (9th Cir. 2017). However, the Ninth Circuit has held that the Social Security
8 regulations revised in March 2017 are “clearly irreconcilable with [past Ninth
9 Circuit] caselaw according to special deference to the opinions of treating and
10 examining physicians on account of their relationship with the claimant.” *Woods v.*
11 *Kijakazi*, No. 21-35458, 2022 U.S. App. LEXIS 10977, at *14 (9th Cir. Apr. 22,
12 2022). The Ninth Circuit continued that the “requirement that ALJs provide
13 ‘specific and legitimate reasons’ for rejecting a treating or examining doctor’s
14 opinion, which stems from the special weight given to such opinions, is likewise
15 incompatible with the revised regulations.” *Id.* at *15 (internal citation omitted).

16 Accordingly, as Plaintiff’s claim was filed after the new regulations took
17 effect, the Court refers to the standard and considerations set forth by the revised
18 rules for evaluating medical evidence. *See* AR 15, 216.

19 Dr. Morgan evaluated Plaintiff for DSHS on October 24, 2019. 357–62. Dr.
20 Morgan reported that he reviewed unspecified “DSHS records.” AR 357. On
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1 mental status exam, Plaintiff was well groomed; exhibited normal speech and a
2 cooperative attitude and behavior; and presented with a depressed mood and tearful
3 affect. AR 360–61. Dr. Morgan further indicated that Plaintiff’s fund of knowledge,
4 concentration, abstract thought, insight, and judgment all were within normal limits,
5 but that Plaintiff exhibited challenges with recent and immediate memory. AR 361.
6 Dr. Morgan found that Plaintiff had symptoms of depression and PTSD. AR 358.
7 Dr. Morgan opined that Plaintiff is markedly limited in seven basic work activities,
8 severely limited in three others, and mildly or not limited in one activity. AR 359.
9 Dr. Morgan opined that plaintiff’s overall level limitation is marked. AR 359. Dr.
10 Morgan opined that Plaintiff’s limitations regarding basic work activities were not
11 the result of substance use and would last twelve months. AR 359–60. Dr. Morgan
12 concluded with the following “DISCLAIMER”:

13 The sole purpose of this evaluation is to assess the ability of claimant
14 to engage in gainful employment based on DSHS criteria for
15 disability(ies) pertaining to eligibility for ABD/HEN or
16 TANF/WorkFirst programs ONLY. Use of this evaluation for any other
17 purpose, including parenting, custody, divorce, civil or criminal
18 forensic matters is contrary to the intent of the evaluation and deemed
19 inappropriate.

20 AR 360.

21 The ALJ found Dr. Morgan’s opinion “not persuasive” and discussed her
reasoning in the context of her evaluation of all of the medical source opinions in the
record. AR 27–29. Plaintiff asserts that the ALJ could not find Dr. Morgan’s

1 opinion unreliable for being based largely on Plaintiff's self-reports, unspecified
2 "DSHS records," and a one-time evaluative encounter with Plaintiff. *See* ECF No.
3 10 at 16. However, the ALJ appropriately considered the nature of Dr. Morgan's
4 encounter with Plaintiff and whether his opinion was sufficiently supported to be
5 persuasive. AR 27–29. Moreover, it was not legal error for the ALJ to discount Dr.
6 Morgan's opinion to the extent that it lacked any explanation for the conclusions that
7 he reached about how limited Plaintiff is in his ability to work. *See Molina v.*
8 *Astrue*, 674 F.3d 1104, 1111–12 (9th Cir. 2012) (ALJ properly rejected physician
9 assistant's opinion where it consisted of a check-the-box form and failed to provide
10 supporting reasoning); *Crane v. Shalala*, 76 F.3d 251, 253 (9th Cir. 1996) (ALJ
11 permissibly rejected psychological evaluations "because they were check-off reports
12 that did not contain any explanation of the bases of their conclusions"); *De Guzman*
13 *v. Astrue*, 343 F. App'x 201, 209 (9th Cir. 2009) (ALJ was "free to reject" doctor's
14 check-off report that did not explain basis for conclusions). The ALJ further
15 considered whether Dr. Morgan's opinion is consistent with evidence from other
16 sources and articulated why he considered Dr. Morgan's opinion to be less
17 persuasive than other sources. AR 27–29. As these are the relevant factors from the
18 governing framework, and the ALJ referred to substantial evidence in applying the
19 factors, the Court finds no error in the ALJ's treatment of Dr. Morgan's opinion.

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1 **CONCLUSION**

2 As the Court finds no error in the two issues raised by Plaintiff, the Court
3 denies Plaintiff's Motion for Summary Judgment and grants judgment in favor of the
4 Commissioner.

5 Accordingly, **IT IS HEREBY ORDERED** that:

- 6 1. Plaintiff's Motion for Summary Judgment, **ECF No. 10**, is **DENIED**.
7 2. Defendant the Commissioner's Brief, **ECF No. 11**, is **GRANTED**.
8 4. Judgment shall be entered for Defendant.

9 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this
10 Order, enter judgment as directed, provide copies to counsel, and **close the file** in
11 this case.

12 **DATED** August 16, 2023.

13
14 *s/ Rosanna Malouf Peterson*
15 ROSANNA MALOUF PETERSON
16 Senior United States District Judge
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